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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of ALI and SOUSAN  
DARIAN.

ALI DARIAN,

Appellant,

v.

SOUSAN DARIAN,

Respondent.

G054962

(Super. Ct. No. 02D009176)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
James L. Waltz, Judge. Affirmed.

Law Offices of Stephen Abraham and Stephan E. Abraham for Appellant.

No appearance for Respondent.

\* \* \*

Under the terms of a marital dissolution judgment, appellant Ali Darian was required to make child support, spousal support, and equalization payments to respondent Sousan Darian.<sup>1</sup> The judgment also awarded Sousan title to the couple's former residence as her sole and separate property and ordered Ali to execute a quitclaim deed conveying his interest in the property to Sousan. Sousan's attorney subsequently recorded an abstract of judgment against Ali. However, because Ali had not yet conveyed his interest in the residence to Sousan as required by the judgment, and because, unbeknownst to Sousan, he had earlier encumbered the property with a \$300,000 trust deed purporting to secure a loan from his brother, the recorded abstract of judgment created a lien on what should have been Sousan's residence. Sousan discovered this problem when she later attempted to refinance the property. In a bungled attempt to release that lien, Sousan's former attorney executed and recorded a full acknowledgement of satisfaction of judgment (ASJ) in favor of Ali. We say "bungled" because Ali had not actually satisfied the judgment at all, and the proper vehicle in that context would have been a release of lien rather than a full satisfaction of judgment. At some point in the subsequent enforcement proceedings, Ali caught wind of the ASJ and refused to make any further payments on the judgment. Sousan filed a motion to expunge and cancel the satisfaction of judgment based on her attorney's mistake. The court granted the motion. Ali appealed.

We affirm. Ali's principal argument is that the court exceeded its authority under Code of Civil Procedure section 473 because it expunged the satisfaction of judgment beyond the six-month time limit imposed by that section.<sup>2</sup> The court did not purport to rely on section 473, however, instead relying on its own inherent equitable

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<sup>1</sup> For clarity, we shall refer to the parties by their first names. We intend no disrespect.

<sup>2</sup> All statutory references are to the Code of Civil Procedure unless otherwise stated.

powers. Indeed, as a general matter the court's inherent equitable power offers a distinct and cumulative remedy to that available under section 473. We have found no authority, nor can we think of any justification, for restricting the court's inherent equitable powers in this context.

Ali does argue, alternatively, that the court abused its inherent equitable discretion to set aside the satisfaction of judgment on the ground of mistake, but we conclude the court acted within its discretion. Cancelling the ASJ would not harm either Ali or the public, and given that the problem was caused by Ali's failure to promptly comply with the judgment in the first place, the equities strongly favored granting relief.

## FACTS

Ali filed the present marital dissolution proceeding in 2002. In 2005, the parties entered into a stipulated judgment that a certain residential property (the Jenner Property) would be listed for sale. In 2007, the parties stipulated to entry of another judgment on reserved issues. That judgment provided, among other things, that Ali would pay Sousan \$1,000 per month in child support and \$2,000 per month in spousal support. It required Ali to pay Sousan \$120,000 as a "compromise payment" to compromise "issues such as attorney fees, equalization payment, credits, offsets and reimbursements." Finally, it modified the 2005 judgment so that the Jenner Property would now be Sousan's sole and separate property and would not need to be listed for sale. Sousan's attorney recorded abstracts of judgment reflecting these judgments.

In 2008, Sousan advised her attorney, Michael Morris, that she was attempting to refinance the Jenner Property but that, contrary to the court's order, both Ali and his brother remained on title to the Jenner Property by reason of a previously undisclosed deed of trust purportedly securing a \$300,000 loan to Ali from his brother. According to Morris, "It was suggested by the escrow company to release the Abstract of

Judgment recorded against [the Jenner Property] so that [Ali] and his brother could effectuate and record a full Reconveyance of the Jenner Property and [Sousan] in turn could continue with the refinance of the Jenner Property.” In response, Morris executed and recorded the ASJ at the heart of this case, checking the box for a “full” satisfaction of judgment. Ali never demanded that the ASJ be issued, nor was he served with it.

In December 2015, Sousan caused the child and spousal support component of the judgment to be renewed in the amount of \$243,257.80. Approximately three weeks later, Ali filed the ASJ with the court and took the position that he owed nothing on the judgment, though he never claimed to have actually satisfied it.

In response, in September 2016, Sousan filed a motion seeking an order cancelling the ASJ and expunging its recordation. Sousan also sought an order reaffirming Ali’s child and spousal support obligations.

In connection with the motion, Morris, Sousan’s former attorney, filed a declaration acknowledging two mistakes in connection with the ASJ. First, it “was recorded as a ‘full’ satisfaction when, in fact, it should have been recorded, if anything, as a ‘matured installment’ satisfaction due to the fact that the support Judgment against [Ali] had not been satisfied. [Ali] was and still remains in arrears for support owed to [Sousan] in this matter.” Second, and perhaps more to the point, “A Satisfaction of Judgment should not have been issued.”

Sousan also filed a declaration, testifying that Ali had never satisfied his obligations under the family law judgments.

Ali opposed the motion on the ground that the motion was untimely under section 473, subdivision (b), because the motion was filed more than six months after the ASJ was issued, recorded, and filed in the present action. Ali also argued Sousan had not presented convincing evidence of a mistake warranting relief.

The court granted Sousan’s motion. It did so on the following findings: Ali had not even attempted to show the judgments were actually satisfied; Morris issued

and recorded the ASJ based on a “profound mistake”; Sousan’s and society’s interests in enforcing support judgments is vital; it would be inequitable to deem them satisfied; and there would be no prejudice to Ali in expunging the ASJ. Ali appealed.

## DISCUSSION

Ali raises two arguments on appeal. First, he contends the six-month time limit of section 473, subdivision (b), precluded the relief the court granted. Second, he contends the court abused its discretion because there was no evidence of mistake.

Section 473, subdivision (b), permits a court to “relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” An application under section 473 must be made “within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.” Although Sousan did not file a respondent’s brief on appeal, her position at the trial court was: “It is unclear to this author how many times it needs to be said, but the relief [Sousan] seeks herein, is grounded solely in equity, and has nothing to do with the statutory relief provided by [section] 473.”

Indeed, Ali has not cited any authority for the proposition that the court was required to decide Sousan’s motion under section 473. At least in the case of default judgments, section 473 and the court’s inherent equitable powers confer distinct remedies. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981 [“After six months from entry of default, a trial court may still vacate a default on equitable grounds even if statutory relief is unavailable”]; *People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 582 [“The court had *inherent equitable authority*, separate and apart from section 473, to set aside the judgment based on extrinsic fraud or mistake”]; *Otani v. Kisling* (1963) 219 Cal.App.2d 438, 442; *Jeffords v. Young* (1929) 98 Cal.App. 400, 407

[the remedies are “entirely distinct and cumulative”].) We see no reason to treat an ASJ any differently. Here, the court expressly denied that it was deciding Sousan’s motion under section 473. Accordingly, we need not address whether the court’s order would have been permissible under that section.

Instead, we consider the court’s authority to provide relief under its broad, inherent discretionary powers. The relief Sousan sought here was essentially twofold: to expunge the recordation of the ASJ, and to cancel it or deny it any effect in Sousan’s efforts to enforce the judgment.

A court has inherent discretionary authority to expunge public records. (*Flowers v. Financial Industry Regulatory Authority, Inc.* (2017) 16 Cal.App.5th 946, 954.) “[I]n any given context in which the court is prevailed upon to exercise its equitable powers, it should weigh the competing equities bearing on the issue at hand and then grant or deny relief based on the overall balance of these equities” (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1133-1134 (*Lickiss*)) thus, “expungement is proper where the benefits to the petitioner outweigh the disadvantages to the public and the burden on the court” (*id.* at p. 1134).

Ali does not cite this relevant legal principle, but instead asks us to analyze the case under the traditional rubric of the court’s authority to vacate a judgment, which requires a showing of extrinsic fraud or mistake. Ali cites *Rappleyea v. Campbell, supra*, 8 Cal.4th at page 981, for the proposition that relief from a default judgment after the six-month period has run under section 473, subdivision (b), should only be granted in “exceptional circumstances.” In that context, however, the court’s discretion is limited by the public policy in favor of the *finality of judgments*. (*Id.* at p. 982.) That is not an issue here, and thus the *Lickiss* test above grants a court broader discretion than in the context of vacating a judgment.

Applying the *Lickiss* test here, all of the relevant circumstances counseled in favor of expunging the recorded ASJ. The ASJ was recorded by mistake. When

Morris recorded abstracts of judgment, he created, perhaps unintentionally, a lien on the Jenner Property because Ali had never transferred title, as required by the stipulated judgment. (See § 697.310, subd. (a) [“a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder”].) This created a problem for Sousan when she went to refinance the property, but the fault was Ali’s. Had Ali promptly complied with the stipulated judgment by conveying unencumbered title to the Jenner Property, the recorded abstracts of judgment would not have affected the property. Morris responded to this conundrum by recording the ASJ to clear the lien. But there was a much better option: recording a lien release. (§ 697.400, subd. (c); *Federal Deposit Ins. Corp. v. Charlton* (1993) 17 Cal.App.4th 1066, 1070.) This would have released the lien without creating a false record that Ali had satisfied the judgment. In light of the evidence that Ali had never satisfied the consent judgment, Morris was mistaken in recording an ASJ. He used the wrong procedural vehicle.

Although this mistake might be described as a tactical mistake, it is, nonetheless, within the court’s discretion to grant relief under such circumstances. For example, in *Solv-All v. Superior Court* (2005) 131 Cal.App.4th 1003 (*Solv-All*), the defendant failed to answer because defense counsel believed the case was about to settle, and, therefore, he wanted to save costs and believed the plaintiff would excuse the need for a response. (*Id.* at pp. 1005-1006.) It did not settle, however, and the plaintiff took the defendant’s default. (*Ibid.*) The defendant moved to set aside the default, and defense counsel admitted fault. (*Id.* at p. 1007.) On appeal, the plaintiff argued there was no mistake or neglect under the mandatory-relief provisions of section 473, subdivision (b), because the attorney’s actions were intentional. (*Id.* at pp. 1007-1009.)

The court rejected this rationale, reasoning that the mandatory-fault provisions of section 473, subdivision (b), were enacted for the purpose of, among other things, relieving an innocent client of an attorney’s mistake, and discouraging additional litigation in the form of malpractice actions. (*Solv-All, supra*, 131 Cal.App.4th at p.

1009.) “From the client’s point of view, it doesn’t matter a whit whether the default was due to gross carelessness or bad strategy; either way, the client is the one stuck with the judgment resulting from the attorney’s error. In both cases, it is the attorney’s ‘neglect’ to carry out his duty to his client that causes the problem. In both cases, the client should be entitled to relief if the attorney admits that the inaction was his responsibility.” (*Id.* at p. 1010.)

As we have already pointed out, our case does not arise under section 473, but that fact only bolsters the court’s order here, where the court’s discretion was even broader. There is no question that Morris’s mistake was made in good faith. There is no evidence, for example, that Morris sought any type of unfair advantage through the ASJ. He was simply attempting, clumsily, to remedy the problem that Ali caused by failing to comply with the consent judgment. This mistake was a proper basis for the court’s exercise of its discretion.

Returning to the remaining *Lickiss* factors, the benefit to Sousan was obviously significant. She held a valid judgment against Ali that he had never, in fact, satisfied. As the court noted, the judgment was for child and spousal support, both of which represent vital interests to Sousan and society as a whole. On the flip side, the burden on the public is nonexistent. There is no evidence anyone in the public relied on the recorded ASJ (the refinancing never actually occurred). And, while allowing enforcement of the judgment will place some burden on the court, enforcing a valid judgment is a core function of the court, and the benefit to the judgment creditor plainly warrants the court’s resources in enforcing the judgment. Accordingly, the court did not abuse its discretion in expunging the ASJ.

Sousan’s second request for relief was to ask the court to disregard the ASJ in any enforcement proceedings, or to simply cancel it altogether. This, also, was well within the court’s discretion. Family Code section 290 provides, “A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the

appointment of a receiver, or contempt, *or by any other order as the court in its discretion determines from time to time to be necessary.*” (Italics added.) This provision “generally confers on the trial court broad discretion to select appropriate enforcement remedies and terms; and, in exercising that discretion, to take the equities of the situation into account [citation].” (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2018) ¶ 18:1.5, p. 18–1.) For all of the reasons stated above, the court was well within its discretion to cancel or disregard the ASJ under Family Code section 290.

#### DISPOSITION

The postjudgment order is affirmed. Sousan shall recover any costs incurred on appeal.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.